

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	Case No. 01-01139 (JKF)
W.R. GRACE & CO., <u>et al.</u> ,)	(Jointly Administered)
)	
Debtors.)	

**PRE-TRIAL SUBMISSION OF
ZURICH INSURANCE COMPANY AND
ZURICH INTERNATIONAL (BERMUDA) LTD.**

In accordance with paragraph 4 of the *Order Regarding Phase II Pre-Trial Proceedings* [D.I. 22347] dated July 7, 2009, Zurich Insurance Company and Zurich International (Bermuda) Ltd. (jointly, "Zurich"), by and through its undersigned counsel, hereby submits this Pre-Trial Submission for the Phase II Confirmation Hearing.

I. Statement of Issues

In support of its objection [D.I. 21764] ("Objection") to the *First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code of W.R. Grace & Co., et al., the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants' Representative, and the Official Committee of Equity Security Holders dated as of February 27, 2009* [Docket No. 20872] ("First Amended Plan"), Zurich intends to present the following position: The First Amended Plan fails to comply with various confirmation requirements of section 1129 of the Bankruptcy Code and therefore can not be confirmed. Specifically, the First Amended Plan:

1. Impermissibly attempts to assign the Contracts¹ to the Asbestos PI Trust²;

¹ As defined in Zurich's Brief in Support of its Objection [D.I. 22413].

² Capitalized terms not defined herein have the meaning defined in the First Amended Plan.

2. Obligates Zurich to pay to the Asbestos PI Trust an amount in excess of the amount actually paid by the Asbestos PI Trust to the holder of an allowed Asbestos PI Claim;
3. Impairs coverage defenses under the Contracts, including defenses based on assignment of rights under the Contracts; and
4. Exceeds the scope of permissible exculpations in the Third Circuit.

II. List of Witnesses

Zurich may call one or more of the following witnesses at Phase II of the Confirmation Hearing:

1. George Priest (expert). Mr Priest will testify concerning the economic relationships inherent in the insurer/insured relationship as they relate to the Plan's purported assignment of rights under the Contracts.
2. James B. Shein (expert). Professor Shein is an expert on good corporate governance and Trust practices. He is expected to testify that the structure of the Asbestos PI Trust – and in particular the appointment as members of the TAC of personal injury lawyers who will be representing claimants making claims on the Trust – creates a potential for abuse and for the Trustees and TAC to act contrary to the governing principle in the Trust Agreement that all claimants be treated fairly and equitably in connection with claims made against the Trust and that the Trust not deplete its assets by paying undeserving claims. Professor Shein's opinions are more fully set forth in his expert report submitted in this case and his deposition testimony.
3. A records custodian of Zurich (live or via affidavit). If necessary, the records custodian will authenticate Zurich trial exhibits.
4. Any witnesses designated and/or called by any other party.
5. Any witness(es) necessary in rebuttal to any evidence or argument made at or before the Confirmation Hearing that is or may be contrary to the interests of Zurich.

III. List of Exhibits

Zurich may introduce one or more of the following as exhibits at the Phase II Confirmation Hearing:

1. Zurich Exhibits listed on Exhibit A attached hereto;
2. Transcripts of prior hearings in these cases;
3. Pleadings filed in these cases;
4. Any exhibits offered by any other party; and
5. Any exhibits necessary in rebuttal to any evidence or argument made at or before the Confirmation Hearing that is or may be contrary to the interests of Zurich.

IV. Reservation of Rights and Joinder

Zurich hereby reserves the right to amend and/or supplement this Pre-Trial Submission based upon any subsequent filings and other developments relating to the First Amended Plan. In addition, Zurich hereby joins the pre-trial submissions filed by other parties-in-interest to the extent such pre-trial submissions are not inconsistent with Zurich's interests, and the positions set forth herein. Finally, Zurich reserves the right to file additional objections and/or replies based on the objections filed by other parties-in-interest.

Dated: July 20, 2009

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